

CIVIL REVISION APPLICATION NO. 1855 OF 1996.

Date of decision: 31.1.1997.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. M.B. Gandhi, advocate for the petitioner.

Mr. B.M. Gupta, advocate for the respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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January 31, 1997.

Oral judgment:

Rule. Mr. B.M. Gupta, learned advocate, waives service of rule on behalf of the respondent.

Petitioner No.1 is the deserted wife of respondent and petitioner No.2 is respondent's minor daughter. The petitioners filed suit in the City Civil Court, Ahmedabad bearing Civil Suit No. 35 of 1990 claiming maintenance from 1.12.1987, i.e., the date of desertion. It appears

that during the pendency of that suit the parties agreed to the quantum of interim alimony. Hence consent terms, Ex. 47, were filed and was recorded. Accordingly the respondent agreed to pay a sum of Rs.2,600/- per month as interim alimony. The arrears was agreed to be deposited in the court on or before 30.9.1991 and thereafter the amount of interim alimony was agreed to be paid on or before tenth of every succeeding month. As alleged, as the respondent failed to pay and deposit regularly the amount of interim alimony as per agreed terms vide Ex.47, the petitioners took out chamber summons Ex.113/114 with following prayers:

- (i) Respondent be punished for breach of order/contempt of court owing to noncompliance of the order passed below Ex.47,
- (ii) Defence be struck off,
- (iii) Respondent be directed to deposit regularly the amount of interim alimony every month.

The court below vide its order dated 9.10.1996 disposed of the chamber summons directing the respondent to deposit the outstanding dues of interim alimony on or before 25.10.1996 and in default, the defence would be struck off. Though the order is in favour of the petitioners, the same has been challenged by them by preferring this Civil Revision Application contending that the court below has committed an error in not initiating contempt proceedings or taking appropriate action for breach or noncompliance of the order.

During the course of arguments, Mr. Gupta, learned advocate for the respondent, has filed pursis along with xerox copies of receipts showing the amount deposited in court towards interim alimony. The total amount deposited till 20.1.1997 comes to Rs.50,000/- which makes good the payment of interim alimony till 31.1.1997 and part payment towards the entitlement of February 1997. Thus, even the current amount of interim alimony stands deposited, consequently, question of striking off defence does not arise. Even otherwise also it is a discretionary relief and even if the court strikes off defence in view of noncompliance of order as it stands on that day, but subsequently if the order stands complied with, the court in its discretion may permit the respondent to defend the suit, reviewing its earlier order. Mr. Gandhi for the petitioners has also not been able to satisfy the court for taking contrary view.

As regards prayer for regular payment, Mr. Gupta, learned advocate for the respondent, under instructions from his client, makes a statement in the form of undertaking, that henceforth the respondent will go on making regular payment of interim alimony on or before 10th of every succeeding month. Since the statement of Mr. Gupta under instructions from his client is in the form of an undertaking, Mr. Gandhi for the petitioners, feels satisfied. Relying upon such undertaking, no specific order is required to be passed in relation to prayer (iii) above.

Looking to the tenor of deposit/payment of the amount of interim alimony, it is true and one can safely hold that the respondent has been very irregular. Time and again the petitioners had to move the trial court for issuance of appropriate directions regarding payment of interim alimony. Every time only under the pressure of process and consequent actions the respondent has made payment. But the fact remains that as and when the court is moved the respondent has made payments to wipe off arrears. Mr. Gandhi for the petitioners vehemently argues that the conduct of the respondent tantamounts to breach of order passed below Ex.47 as well as civil contempt as defined in the Contempt of Courts Act. On this point Mr. Gandhi has relied upon the judgment of this Court in the case of Miss Shilpa Shah v. Bansilal K. Shah, 1993 (1) GLR 223. As regards proposition of law, I am in absolute agreement but venture to say that question of breach of order and contempt would depend upon nature of order and facts and circumstances of individual case. If the order contains a direction then noncompliance thereof may amount to breach or civil contempt. If the order is passed on an agreement between the parties and is simpliciter recorded without giving any directions, in my view, noncompliance thereof, in all cases, may not amount to breach or civil contempt. In the instant case, the order of interim alimony is payable under an agreement between the parties placed on record at Ex.47. The court simply endorsed saying "recorded", meaning thereby, taken a note of the fact. The court has not at all issued any direction, consequently noncompliance may not amount to disobedience or contempt of court as defined under Section 2 (B) of the Contempt of Courts Act. On this point Mr. Gupta for the respondent has placed reliance upon a decision of the Apex Court in the case of Babu Ram v. Sudhir Bhasin, AIR 1979 SC 1528, which clearly lies down that disobedience of compromise decree or consent order does not amount to contempt.

The aforesaid observations on merits are based on the

peculiar facts of this case. Therefore, it may not be understood that in all cases noncompliance of court's order for payment of interim alimony may not amount to breach or civil contempt. I reiterate and say that question of breach of order and civil contempt would depend upon the intention of court and tenor of order, consequently while considering question of breach and contempt, facts of each case will have to be examined. Before parting with the order, this court expresses grave concern about the growing tendency of the litigants not to comply with court's orders in its letter and spirit. It is found that despite clear order litigants on their own do not comply and force the beneficiary to take recourse of law time and again. In this case the conduct of respondent is also highly outrageous and otherwise contemptuous. To approve such conduct would not only give premium on the unjust and illegal attitude of the respondent but may indirectly encourage other similarly placed persons in society to fearlessly flout orders of courts in future. Once the court finds that the order has been wilfully and flagrantly flouted without any justifiable reason the person shall not deserve a lenient view and be made to face deterrent consequences. The courts below also should not hesitate to take recourse of deterrent action when it feels that the order has been flagrantly violated.

In light of aforesaid discussion and especially in light of the statement made by Mr. Gupta under the instruction of his client in the nature of an undertaking that the respondent shall regularly deposit the amount of interim alimony on or before 10th of every succeeding month, the court finds no merits in this application. Therefore, the application is rejected. Rule is discharged. No order as to costs.